APPEAL NO. 040928
FILED JUNE 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 31, 2004. The hearing officer decided that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) Appellant 1 (carrier) is not relieved from liability for compensation, because the injury did not occur while the claimant was in a state of intoxication from the introduction of a controlled substance as defined in Section 401.013; and (3) the claimant had disability from September 5, 2003, through February 2, 2004. The carrier appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred by failing to shift the burden of proof to the claimant on the issue of intoxication. Appellant 2 (employer) filed a letter stating that it "wished to file an appeal on the Hearing Officer's decision…." The claimant did not file a response.

DECISION

Affirmed as reformed.

Although not raised by the parties, we reform the hearing officer's decision to delineate the parties' stipulations from the hearing officer's findings of fact. Finding of Fact No. 1 (D), (E), and (F) is, therefore, renumbered as Finding of Fact Nos. 4, 5, and 6, respectively. Additionally, we reform Conclusion of Law No. 5 and the "Decision" paragraph to state that the claimant had disability from September 5, 2003, through February 2, 2004, consistent with renumbered Finding of Fact No. 6.

CARRIER'S APPEAL

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered all of the evidence presented and found that the claimant sustained an injury to his right hand in the course and scope of his employment, that the claimant had the normal use of his mental and physical faculties on the date of injury, and that the claimant was unable to obtain and retain employment at his preinjury wage from September 5, 2003, through February 2, 2004. Contrary to the carrier's assertion, the hearing officer presumably would not have reached the question of whether the claimant had the normal use of his faculties at the time of injury had she not shifted the burden of proof to the claimant on the issue of intoxication. In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against

the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

EMPLOYER'S APPEAL

As stated above, the employer seeks to appeal the hearing officer's decision and order. We have held that an employer who is not a party at a CCH has no standing to appeal the decision of a hearing officer. *See* Texas Workers' Compensation Commission Appeal No. 031264, decided June 30, 2003, and cases cited therein. The record reflects that the employer is not a party in this proceeding. Accordingly, the employer's appeal is dismissed for lack of standing.

The decision and order of the hearing officer is affirmed, as reformed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge